

Message Text

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PAGE 01 OTTAWA 03694 142211Z

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E.O. 11652: N/A
TAGS: ETEL, CA
SUBJ: BORDER TV TALKS WITH GOC -- THE CRTC
APPROACH

REF: OTTAWA 3679

1. MICHAEL SHOEMAKER (EXECUTIVE DIRECTOR, POLICY, PLANNING AND ANALYSIS) AND RALPHY HART (SPECIAL ADVISER, OPERATIONS) MET WITH TCO SEPTEMBER 14 TO DISCUSS CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC) PREPARATIONS FOR OCTOBER 6 DISCUSSIONS. THEY EMPHASIZED THAT THEIR THINKING PRESENTLY HAD NO OFFICIAL STATUS WITHIN THE COMMISSION AS THE COMMISSION MEMBERS WILL ONLY BE BRIEFED ON THE SUBJECT LATER THIS WEEK. HOWEVER, THEY EXPECT THAT THE BROAD OUTLINES OF THEIR APPROACH WILL BE ACCEPTED. BOTH OF THESE OFFICIALS (WHO WERE INVOLVED IN THE JANUARY MEETING) EXPECT TO ACCOMPANY CHAIRMAN BOYLE NEXT MONTH.

2. IN SHOEMAKER AND HART'S VIEW, THE MOST IMPORTANT ISSUE TO BE FACED IN DEVISING ALTERNATIVES TO THE PRESENT DELETION POLICY IS THE SECURING OF EXCLUSIVE CANADIAN RIGHTS TO THE PROGRAMS CANADIAN BROADCASTERS HAVE PURCHASED FROM U.S. PRODUCERS AND SUPPLIERS. THE BROADCASTERS THOUGHT THEY HAD SUCH RIGHTS YEARS AGO BUT NOW ARE QUITE AWARE THAT THESE HAVE BEEN UNDERMINED THROUGH THE CABLE RELAY OF U.S. STATIONS--

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PAGE 02 OTTAWA 03694 142211Z

EXCEPT THAT, WHEN THE SHOWINGS ARE SIMULTANEOUS, THE

CABLE OPERATOR MUST SUBSTITUTE THE CANADIAN VERSION WITH ITS ADVERTISING FOR THE AMERICAN VERSION.

3. TWO VEHICLES APPEAR POSSIBLE TO RESOLVE THIS ISSUE:

(A) A POLICY OF NON-SIMULTANEOUS SUBSTITUTION WHICH WOULD INVOLVE RESOLUTION OF THE RESIDUAL PAYMENTS TO PERFORMERS QUESTION IN A MANNER WHICH WOULD PERMIT THIS TO BE A MEANINGFUL OPTION. THE GOC HAS NO LEVERAGE TO DEAL WITH THE AMERICAN FEDERATION OF RADIO AND TELEVISION ARTISTS, AND SHOEMAKER AND HART BELIEVE IT IS THE U.S. PRODUCERS WHO WOULD HAVE TO DO SO, PERHAPS WITH THE ENCOURAGEMENT OF APPROPRIATE AGENCIES OF THE U.S. GOVERNMENT; AND

(B) AN AGREEMENT ON THE PART OF THE U.S. BORDER STATIONS TO FACILITATE DELETION (AND SUBSTITUTION) FROM THE NETWORK SHOWS THEY CARRY (AS DISTINCT FROM LOCAL-ORIGIN SHOWS) BY PROVIDING LOGS INDICATING WHEN THE U.S. COMMERCIALS ARE TO BE INSERTED SO THAT CANADIAN ONES CAN BE ADDED. SHOEMAKER AND HART MAINTAINED (AS ON PREVIOUS OCCASIONS) THAT, SINCE THE U.S. STATIONS ARE NOT PAID DIRECTLY FOR THE CANADIAN AUDIENCES THEY DELIVER FOR NETWORK SHOWS, THIS SHOULD NOT CAUSE THEM ANY SIGNIFICANT ECONOMIC HARSHSHIP, BUT IT MIGHT CAUSE PROBLEMS BETWEEN THEM AND THE NETWORKS. THEY ALSO RECALLED VARIOUS REMARKS OF BUFFALO OFFICIALS THAT IF DELETION WERE CONFINED TO THE NETWORK SHOWS THEY WOULD NOT SERIOUSLY OBJECT. THE VICTIM IN THIS SOLUTION WOULD BE THE LARGE MULTINATIONAL ADVERTISERS WHICH COULD NO LONGER ENJOY FREE DELIVERY OF CANADIAN AUDIENCES AND WOULD HAVE TO EXPAND THEIR CANADIAN TV ADVERTISING BUDGETS.

4. OF THESE TWO VEHICLES, SHOEMAKER AND HART APPEARED TO BELIEVE NON-SIMULTANEOUS SUBSTITUTION WAS THE PREFERRED ONE AS IT WOULD BE MORE SELF-EXECUTING OVER THE LONGER TERM, ALTHOUGH IT WOULD NOT DEAL WITH ALL THE OUTPUT OF THE US STATIONS. THEY WERE RELUCTANT TO DISCUSS COMPENSATION BY CABLE COMPANIES OR OTHER ARRANGEMENTS WITH RESPECT TO THE LOCALLY GENERATED PROGRAMS OF THE BORDER STATIONS THEMSELVES (REF: STEIN'S COMMENTS IN REFTEL), ALTHOUGH THEY LIMITED OFFICIAL USE

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PAGE 03 OTTAWA 03694 142211Z

ADMITTED THESE APPEARED TO BE THE MORE PROFITABLE ONES FOR THE STATIONS IN TERMS OF THEIR CANADIAN (AS WELL AS U.S.) REVENUES.

5. SHOEMAKER AND HART ALSO INDICATED ANOTHER EMPHASIS OF THE CRTC WOULD PROBABLY BE TO SECURE A BILATERAL AGREEMENT WHEREBY THE COMMERCIAL OPERATIONS OF BROADCASTING STATIONS WOULD BE LIMITED TO THE RESPECTIVE SIDES OF THE BORDER. HOWEVER, THEY COULD NOT PROVIDE

ANY FURTHER DETAILS ON THIS POINT.

6. BOTH THESE OFFICIALS (LIKE STEIN AT DOC) ASKED TCO FOR ANY INFORMATION ABOUT LIKELY U.S. EMPHASIS AT THIS MEETING TO HELP THEM RESPOND CONSTRUCTIVELY TO U.S. PROPOSALS. THEY BOTH EMPHASIZED THAT THEY WANTED THE OCTOBER 6 AND ANY SUBSEQUENT SESSIONS TO BE PRODUCTIVE AND RESULT IN A MUTUALLY-ACCEPTABLE SOLUTION TO THE PROBLEM. TCO PROMISED TO RELAY THIS QUERY TO WASHINGTON.

7. SHOEMAKER THEN ADDED THAT HE WAS PERSONALLY DISTURBED BY SUGGESTIONS (FROM SECRETARY KISSINGER TO MACEACHEN AND FROM OTHER CONVERSATIONS) THAT THE USG SEEMED TO REGARD THE GOC AS HAVING THE PRIMARY RESPONSIBILITY TO COME UP WITH ALTERNATIVE APPROACHES TO THE DELETION POLICY. HE FELT IT WAS INCUMBENT ON THE USG AS THE OBJECTOR TO CANADIAN POLICY TO HAVE AN EQUAL OBLIGATION. TCO ASSURED HIM THAT THE USG WAS MEETING WITH THE INDUSTRY WITH A VIEW TO DEVELOPING PROPOSALS. TO THIS SHOEMAKER REJOINED THAT HE HOPED THESE WOULD BE PROPOSALS OF THE USG AS WELL AS OF THE INDUSTRY. ONE OF THE DISTURBING FEATURES OF THE UNACCEPTABLE INDUSTRY PRESENTATION OF LAST MARCH, HE CONTINUED, WAS THAT IT WAS NEVER CLEAR AS TO THE EXTENT TO WHICH THE USG POSITIVELY ENDORSED THE STATIONS' APPROACH. HE FOR ONE DID NOT SEE HOW THE FCC COULD ACCEPT WITH EQUANIMITY THE IDEA OF ITS REGULATED ENTITIES UNDERTAKING TO ESTABLISH A "CANADIAN PRESENCE" FOR TAX AND OTHER PURPOSES. A REVERSE PROPOSAL BY CANADIAN BROADCASTERS WOULD BE ANATHEMA TO THE CRTC. TCO REMINDED SHOEMAKER THAT THERE WERE MANY DIFFERENCES IN BOTH ECONOMIC PHILOSOPHY AND REGULATORY FRAMEWORKS

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PAGE 04 OTTAWA 03694 142211Z

BETWEEN THE TWO COUNTRIES. SHOEMAKER AGREED, BUT REPEATED HIS VIEW THAT HE WANTED MORE POSITIVE ASSURANCES THAT WHATEVER PROPOSALS THE USG PUT FORWARD WERE CLEARLY ACCEPTABLE TO THE GOVERNMENT ITSELF.

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